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THE RULES AND PRACTICE

BEFORE

THE PARLIAMENT OF CANADA

UPON

BILLS OF DIVORCE

BY

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THIS WORK IS DEDICATED TO

The Honourable James A. Lougheed, K.C. P.C.

LEADER OF THE GOVERNMENT IN THE SENATE
AND A MEMBER OF THE DIVORCE
COMMITTEE THEREOF.

PREFACE.

In the following pages an attempt has been made to supply a long-felt want. The changes in divorce practice since the publication of Gemmill on Divorce have rendered that excellent work practically obsolete. It is hoped that the notes to the Rules will be found sufficient to enable the practitioner to avoid difficulties which frequently arise in the prosecution of an application for divorce. All the Rules of the Senate relating to divorce proceedings are printed in the book. In the preparation of the work reference has been made to Gemmill on Divorce, Rayden on Divorce, and Browne & Watts on Divorce.

The author desires to acknowledge his appreciation of the kindness of the Honourable James A. Lougheed, K.C. P.C., who read the draft of the book and who made many valuable suggestions which have been incorporated in it.

CHAPTER I.

JURISDICTION OF PARLIAMENT.

The jurisdiction of the Parliament of Canada in reference to divorce is declared by section 91, sub-sec. 26, of *The British North America Act,* but no general law applicable throughout Canada has been passed thereunder, nor has jurisdiction in divorce been conferred on any Court. At the time of the Union in 1867, Courts exercising jurisdiction in divorce existed in the Provinces of Nova Scotia and New Brunswick, and such Courts have since then continued to deal with divorce applications in virtue of section 129 of *The British North America Act,* by which it is provided that "all laws in force in Canada, Nova Scotia or New Brunswick, at the Union, and all legal commissions, powers and authorities, and all officers, judicial, administrative, and ministerial existing therein at the Union, shall continue in Ontario, Quebec, Nova Scotia and New Brunswick respectively, as if the Union had not been made." There were then no Courts exercising such jurisdiction in either Ontario or Quebec.

At the time of the admission to the Union of the Provinces of Prince Edward Island and

British Columbia, the Courts of these provinces exercised jurisdiction in divorce, and they have since continued to do so.

While the jurisdiction of Parliament in divorce is general through Canada, and it is open to persons domiciled in any province of Canada to apply to Parliament for a divorce, in practice applications to Parliament for divorce are confined to persons domiciled in the Provinces of Quebec, Ontario, Manitoba, Saskatchewan, Alberta and the Yukon Territory.

Under *The British North America Act,* Canada obtained a constitution similar in principle to that of the United Kingdom, and within the limits of the subjects assigned to it the Parliament of Canada is supreme, and its power is as plenary and ample as that of the Parliament of the United Kingdom. While in the exercise of such power the Canadian Parliament has authority to grant divorces for any reason that may seem to it sufficient, still in exercising such authority, Parliament is guided by and practically conforms to the principles upon which divorces are granted by the Courts of England. This statement is, however, subject to this exception, that in Canada divorces are granted on the application of the wife on the sole ground of adultery, while in England, it is necessary that the adultery should be accompanied by cruelty or desertion, or the husband must have been

guilty of incestuous adultery, of bigamy with adultery, of rape, of sodomy or bestiality.

In a discussion which arose in the Senate in 1888, on the question of the establishment of a Divorce Court, the late Senator Gowan in speaking of the duties and functions of Parliament, said: "It (Parliament) decides whether the charges are proved, whether they constitute such a case as should entitle the party to a special Act for relief, and what relief, if any, should be granted to the party, in view of all the circumstances; and Parliament may, and ought always, to have in regard, not merely the question as it affects the parties, but the effect in relation to morals and good order—the effect which the passing a particular law might have upon the well-being of the community. Parliament as the supreme power has its duties and responsibilities and cannot compromise the well-being of society which has been entrusted to it under the Constitution."

CHAPTER II.

DOMICILE AS AFFECTING JURISDICTION.

In granting or withholding relief in divorce applications, Parliament observes the principles of the law of domicile as recognized in the English Divorce Court. A woman on marriage acquires the domicile of her husband, and during the continuation of the marriage she has and can acquire no domicile separate from that of her husband. Mere residence short of actual domicile is not sufficient to found jurisdiction, and Parliament will not entertain an application for divorce unless the domicile of the applicant is within Canada at the time of the application.

The English Courts do not recognize as possessing any extra territorial validity any decree of dissolution of marriage, unless pronounced or recognized in a country in which the parties were domiciled at the commencement of the suit. When the domicile of the parties is in Canada, a divorce obtained by either of them in a foreign country will not be recognized by Parliament.

The question frequently arises, where in answer to an application of a person domiciled in Canada the respondent sets up a divorce

obtained in the United States of America followed by remarriage there. Such divorces have no validity in Canada, and the cohabitation following the remarriage is adulterous and affords a ground for relief.

The Hearns case, Stats. of 1913, p. 239, and the Hutcheon case, Stats, of 1914, p. 367, are instances in which the wife deserted her husband, obtained a divorce in the United States and then remarried.

An interesting discussion of the law of domicile as affecting the jurisdiction of Parliament, and of the effect of American divorces, will be found in the Senate debates for 1887, in the Ash case. In the Harris case the marriage took place in Canada in 1832. The Bill was passed by both Houses in 1845, when both the petitioner and respondent were absent from the province, and was reserved for Her Majesty's approval. The Bill was disallowed owing to the fact that the parties were not domiciled in Canada at the date of the passing of the Act.

PROCEDURE.

Applications for divorce come under the head of Private Bill Legislation, and the practice and procedure is now governed by special standing rules and orders adopted by the Senate in 1906.

Apart, however, from these special rules and orders, other rules relating to Private Bills, when not inconsistent with such rules and orders, apply to Divorce Bills.

The rules and forms seem to contemplate adultery as the sole ground of divorce, that being the only ground specifically stated, but it is provided by Rule 152, that, in cases not provided for, the principles upon which the Imperial Parliament proceeds in dissolving marriage may, as far as they are applicable, be applied to divorce proceedings before the Senate.

APPOINTMENT OF COMMITTEE.

At the commencement of each session a Committee of Selection, consisting of nine Senators named by the Senate, is appointed, whose duty it is to nominate the Senators to serve on the several standing Committees. The Committee of Selection appoints the Committee on Divorce, composed of nine Senators.

Every Standing or Special Committee meets, if practicable, on the next sitting day after appointment and chooses a chairman; and a majority of Senators appointed on such Committee constitute a quorum, unless it be otherwise ordered.

By Rule 87, Senators, although not of the Committee, are not excluded from attending

meetings of the Committee and speaking; but they must not vote. They sit behind the members of the Committee.

By Rule 82, no other persons, unless commanded to attend, are to enter at any meeting of a Committee of the Senate. This does not in practice apply to the members of the House of Commons.

Questions before the Committee are decided by a majority of voices including the voice of the chairman; whenever the voices are equal the decision is deemed to be in the negative. Rule 123.

The Committee chooses its chairman at its first sitting. As presiding officer, he has the general direction of the proceedings on the trial of each petition.

CHAPTER III.

RULE 133.

REFERENCE OF PETITION TO COMMITTEE—MEETINGS OF COMMITTEE.

All petitions for divorce and all matters arising out of petitions for, or bills of divorce, shall be referred to the Standing Committee on Divorce, and no reference to any Committee other than that Committee shall be necessary with respect to such petitions, bills and matters. B. 800, sq.

Notice of the day, hour and place of every sitting of the Committee shall be given by posting up the same in the lobby of the Senate not later than the afternoon of the day before the time appointed for such sitting. B. 807.

NOTES.

Formerly proof of publication had to be made before the Standing Orders Committee. Now the Committee on Divorce deals with that question, as well as with all other questions arising out of the application.

No notice of the sitting of the Committee is given except by posting in the lobby of the Senate, but ample notice is always given so as to enable the parties and their witnesses to be present.

RULE 136.

NOTICE OF APPLICATION TO BE ADVERTISED THREE MONTHS.

Every applicant for a Bill of Divorce shall give notice of his or her intended application, and shall specify therein from whom and for what cause such divorce is sought, and shall cause such notice to be published during at least three months before the consideration by the Committee on Divorce of his or her petition for the said Bill, in the *Canada Gazette* and in two newspapers published in the district in Quebec, Manitoba, Saskatchewan, Alberta, British Columbia or the Northwest Territories, or in the county or union of counties in other provinces, wherein such applicant usually resided at the time of the separation of the parties; but if the requisite number of papers cannot be found therein, then in an adjoining district or county or union of counties.

Notices given in the Provinces of Quebec and Manitoba are to be published in one English and one French newspaper, if there be such newspapers published in the district, but otherwise shall be published in one newspaper in both languages. The notice may be in the subjoined Form "A." If a notice given for any session of Parliament is not completed in time to allow the petition to be dealt with during that session, the petition may be presented

and dealt with during the next ensuing session, without any further publication of such notice. B. 802.

NOTES.

The first step when an application for divorce is intended is to prepare the advertisement, which should conform to Form A, although by Rule 150, the forms prescribed may be varied to suit the circumstances of each case. Adhesion to the form prescribed obviates questions which might otherwise be raised as to the sufficiency of the notice.

All the particulars indicated in the Form should be accurately set forth and every ground on which the divorce is sought should be specifically stated. Application may be made on the following grounds:—

(*a*) Adultery,

(*b*) Adultery and desertion,

(*c*) Adultery and cruelty,

(*d*) Adultery and desertion and cruelty.

(*e*) Bigamy.
The Stock Case, Stat. of 1899, p. 351.

(*f*) Bigamy and adultery.
The Leaitch Case, Stat. of 1912, p. 175.
The Harrison Case, Stat. of 1892, p. 140.

(*g*) Incestuous adultery.

(*h*) Rape.

(*i*) Sodomy and unnatural offences.
The Dakin Case, Stat. of 1911, p. 119.

(*j*) Bestiality.

(*k*) Malformation at time of marriage.

(*l*) Nullity of marriage, owing to fraud, when there has been no consummation by cohabitation.
The Stevenson Case, Stat. of 1869, p. v.
The Lavell Case, Stat. of 1887, p. 331.

So far as the writer is aware, the only other ground for dissolution of marriage, which has been considered by Parliament, is that of impotency.

In the White case, session of 1888, the application by the wife was based on the malformation or impotency of the respondent. The respondent, following the practice in the English Divorce Court, was ordered to attend for medical examination, and both parties having been examined, the physicians reported to the Committee that there was no malformation apparent in the respondent, and that the physical condition of the petitioner was such as to contradict her statement that the marriage had not been consummated. The bill was rejected. The case is referred to as an example of the principle that Parliament is disposed to grant relief upon grounds recognized

in the former Ecclesiastical Courts of England as sufficient to declare a marriage null and void when it is shown to the Committee that the Courts of the province in which the application arises have no jurisdiction to grant relief upon such grounds.

In Quebec the Provincial Courts have jurisdiction to annul a marriage for impotency, natural or accidental, existing at the time of the marriage; but only if such impotency be apparent and manifest. This nullity cannot be invoked by anyone but the party who has contracted the marriage with the impotent person, nor at any time after three years from the marriage.

In Ontario the Courts have no jurisdiction to entertain an action to have a marriage declared null and void upon the ground of impotency: *T.* v. *B.,* 15 O. L. R. 224; nor upon the ground that one of the parties was of unsound mind, and, therefore, incapable of entering into the contract of marriage when the ceremony was performed: *A.* v. *B.,* 23 O. L. R. 261; nor upon the ground that the parties are related within the prohibited degrees: *May* v. *May,* 22 O. L. R. 559; nor to have declared void a marriage duly solemnized unless the case can be brought under section 36 of The Marriage Act, R. S. O. 1914, c. 148; *Reid* v. *Aull,* 32 O. L. R. 68. This is also the law in Manitoba, Saskatchewan,

Alberta and the Yukon Territory. Should any of the above cases arise hereafter in any of these provinces, the only forum open to the aggrieved spouse is Parliament, to which body the right to grant relief belongs.

In the event of a case arising in the Province of Quebec founded on impotency, it is probable that Parliament would decline to give relief since, as already pointed out, the Courts of that province have jurisdiction to annul a marriage for such cause.

If legal proceedings have been taken by the petitioner for Crim. Con. and judgment has been recovered, these facts should be set forth and should be proved by a certified copy of the judgment.

The advertisement must be published for at least three months in the *Canada Gazette* and in two newspapers. This means publication once a week for fourteen weeks. The notices in the *Gazette* and in the newspapers must be identical. A copy of each issue of the newspaper containing the advertisement should be obtained by the solicitor for the purpose of proving publication before the Committee. Proof of publication is made by Statutory declaration under the *Canada Evidence Act.*

The standing orders of the House of Commons apply to Private Bills, applications for

which must by such orders be published for at least two months in the *Canada Gazette,* and when the application comes from either the Province of Quebec or Manitoba, in English in one English newspaper and in French in one French newspaper, published in the district in which the applicant usually resided at the time of the separation of the parties, or if there is no newspaper published therein, then in both languages in a newspaper published in an adjoining district.

When the application comes from any of the other provinces, the notice is to be published for at least two months in the *Canada Gazette,* and in one newspaper published in the city, county or union of counties, where the applicant usually resided at the time of the separation.

Publication for at least two months means nine consecutive weekly insertions.

The publication is to be in the interval of time between the close of the preceding session and the consideration of the petition.

Where the publication is not completed in time to allow of the petition being considered during the session for which notice is given, the petition may so far as the Senate is concerned be presented and heard without further publication of the notice. This rule does not apply to the House of Commons. The

notice must be republished for two months as above stated.

The length of the sessions of Parliament being uncertain, it is important, if possible, to have the advertising completed at least by the opening day of the session for which notice is given. The time required to secure the passage of a bill, even of the simplest character, through both Houses of Parliament is at least six weeks, and in cases in which there are complications the time is much longer. When the advertising is not completed until some time after the session has commenced the petitioner runs the risk of prorogation before the bill passes both Houses, and besides suffering from the necessity of waiting until another session to obtain the relief to which he may be entitled, is obliged to incur the additional expense incident to prosecuting his petition at the next session.

RULE 139.

CONTENTS OF PETITION—GROUNDS FOR RELIEF—NEGATIVING OF CONDONATION—VERIFICATION BY STATUTORY DECLARATION—ENDORSEMENT ON COPY SERVED.

The petition of an applicant for a Bill for divorce must be fairly written and must be signed by the petitioner, and should briefly set forth the marriage, the names in full of the parties thereto, their ages and occupations, when, where and by whom the ceremony was performed, the domicile and residence of each of the parties at the time of the marriage, their matrimonial domicile, residence, and any change thereof, the material facts upon which the petitioner relies as the grounds on which relief is asked, and the nature of the relief prayed for.

The petition should also negative connivance at or condonation of the wrong complained of and collusion in the application for divorce.

2. The allegations of the petition must be verified by declaration of the petitioner, under *The Canada Evidence Act, 1893.*

3. The copy of the petition served upon the respondent shall have endorsed thereon, or appended thereto, the following information:—

(*1*) The petitioner's residence at the time of service.

(*2*) A Post Office address in Canada at which letters and notices for the petitioner may be delivered.

(*3*) The name and address of the solicitor, if any, acting for the petitioner.

(*4*) If such solicitor's address is not at Ottawa, the name and address of some agent for him at Ottawa, upon whom all notices and papers may be served.

(*5*) That if the respondent desires to oppose the granting of the divorce and to be heard by the Senate Committee on Divorce, the respondent must send a notice to that effect to the Clerk of the Senate at the Parliament Buildings, Ottawa, within two months from the date of service upon the respondent, and must in the notice to the Clerk of the Senate give:—

(*a*) The respondent's residence at the time of sending such notice.

(*b*) A Post Office address in Canada at which letters and notices for the respondent may be delivered.

(*c*) The name and address of the solicitor, if any, acting for the respondent.

(*d*) If such solicitor's address is not at Ottawa, the name and address of some agent

for him at Ottawa, upon whom all notices and papers may be served.

(*6*) That, if the respondent does not so notify the Clerk of the Senate, the petition may be considered, and a Bill of Divorce founded thereon may be passed, without any further notice to the respondent.

(*7*) When the petition is one by a husband for a divorce from his wife, that, if the wife shows to the satisfaction of the Senate Committee on Divorce that she has, and is prepared to establish upon oath, a good defence to the charges made by the petition, and that she has not sufficient money to defend herself, the Committee may make an order that her husband shall provide her with the necessary means to sustain her defence, including the cost of retaining Counsel and the travelling and living expenses of herself and of witnesses summoned to Ottawa on her behalf. B. 804 (*t*), seq.

NOTES.

Applications to Parliament for Private Bills are instituted by three petitions addressed respectively to the Governor-General in Council, The Senate and The House of Commons. The petitions must be signed by the petitioner himself, not by his Counsel or Solicitor. If the petitioner cannot write he

should make his mark in the presence of a witness, who should attest the execution of the petition by the petitioner and verify such execution by affidavit.

The form of the petition to the Governor-General is as follows:—

To Field Marshall His Royal Highness Prince Arthur William Patrick Albert Duke of Connaught and of Strathearn, Earl of Sussex (in the Peerage of the United Kingdom); Prince of the United Kingdom of Great Britain and Ireland; Duke of Saxony; Prince of Saxe-Coburg and Gotha; Knight of the Most Noble Order of the Garter; Knight of the Most Ancient and Most Noble Order of the Thistle; Knight of the Most Illustrious Order of Saint Patrick; One of His Majesty's Most Honourable Privy Council; Grand Master of the Most Honourable Order of the Bath; Knight Grand Commander of the Most Exalted Order of the Star of India; Knight Grand Cross of the Most Distinguished Order of St. Michael and St. George; Knight Grand Commander of The Most Eminent Order of the Indian Empire; Knight Grand Cross of the Royal Victorian Order; Personal Aide-de-Camp of His Majesty the King; Governor-General and Commander in Chief of the Dominion of Canada.

The petition of .....
..... humbly showeth

(1) That (here set out the various paragraphs of the petition as in Form C.)

Wherefore your petitioner humbly prays that your Excellency may be pleased to sanction the passing of an Act dissolving the said marriage between your petitioner and the said C. D., and enabling your petitioner to marry again and granting your petitioner such further and other relief in the premises as to your Excellency may seem meet.

And as in duty bound your petitioner will ever pray.

(Date)

.....

Signature of Petitioner.

This petition should be sent to The Honourable The Secretary of State for submission to His Excellency in Council.

The petition to the House of Commons is addressed, To The Honourable, The House of Commons of Canada in Parliament assembled, and proceeds as in Form C.

Where the petitioner's solicitor does not reside at Ottawa, he must appoint an agent at Ottawa, upon whom papers may be served. The agent's name and address must be stated in the endorsement on the petition.

If the respondent intends to oppose the application he must within two months after service of the petition upon him send to the Clerk of the Senate a notice to that effect in which he must state:—

(*a*) His then residence.

(*b*) A Post Office address in Canada at which letters and notices for him may be delivered.

(*c*) The name and address of his solicitor, if any.

(*d*) If such solicitor's address is not at Ottawa, the name and address of some agent for him at Ottawa, upon whom all notices and papers may be served.

It is important in the respondent's interest, that the foregoing notice and information should be sent to the Clerk of the Senate as failure to comply with this requirement may result in the petition being considered and the divorce being granted without further notice to the respondent.

When the wife's means are insufficient to enable her to bear the expenses of the defence, the Committee will order the petitioning husband to furnish her with such money as the Committee may deem sufficient to pay counsel fees, witness fees, travelling expenses and the living expenses of herself and her witnesses at Ottawa.

RULE 137.

SERVICE OF NOTICE AND PETITION.

A copy of the said notice and a copy of the petition to be presented shall, at the instance of the applicant, and not less than two months before the consideration by the Committee of the petition, be served personally, when that can be done, on the person from whom the divorce is sought, who is hereinafter called "the respondent."

If the residence of the respondent is not known or personal service cannot be effected, then, if it be shown to the satisfaction of the Committee that all reasonable efforts have been made to effect personal service, and, if unsuccessful, to bring such notice and petition to the knowledge of the respondent, what has been done may be deemed and taken by the Committee as sufficient service.

NOTES.

The notice, of which a copy is to be served on the respondent, is the notice published in the *Canada Gazette*. The copy of the petition, which is directed to be served, must have thereon the endorsement mentioned in Rule 139. Service, when made in Canada, is proved by statutory declaration. The identity of the person served with the respondent must be established by the declaration. The person

effecting service should have a duplicate of the notice and of the petition and endorsement with him, upon which he should endorse the date of service, the place of service, and the facts establishing the identity of the person served with the respondent. It would be well also to add the date on which the foregoing facts are so endorsed, and all these facts should appear in the declaration of service. The copies of the notice and of the petition which are served must be left with the respondent. When service is effected in a foreign country proof of service must be made by affidavit. A declaration of service in such case will not be accepted by the Committee, *The Canada Evidence Act* having no application outside of Canada.

With respect to affidavits of service made in a foreign country, it may be said generally that such affidavits when made in accordance with the forms required by the laws of the country where they were made will be accepted by the Committee.

Adherence to the following suggestions will probably obviate difficulties which constantly arise before the Committee in consequence of affidavits of service made in a foreign country being found defective in form. If such affidavits are made:—

(*a*) In England or Ireland,

Before a Commissioner authorized to administer oaths in the Supreme Court of Judicature of England or Ireland.

Before a Judge of the Supreme Court of Judicature of England or Ireland.

Before a Judge of any County Court of England or Ireland within his county.

In Great Britain or Ireland before the Mayor or Chief Magistrate of any City, Borough or Town Corporate, certified under the common seal of such City, Borough or Town Corporate.

(*b*) In Scotland,

Before a Judge of the Court of Session or the Justiciary Court of Scotland.

(*c*) In any Colony of Great Britain,

Before a Judge of any Court of Record or of supreme jurisdiction.

(*d*) In any Foreign Place,

Before a Judge of any Court of Record or of supreme jurisdiction or before any consul, vice-consul or consular agent of His Majesty exercising his functions.

And generally wherever made, before a Notary Public certified under his hand and seal,—such affidavits will be considered sufficient.

It must be remembered, however, that when such affidavits are made in the United

States of America before a Notary Public a certificate must be attached signed by an official of a Court of Record showing that the Notary's Commission as a Notary is in force, as in that country Notaries' Commissions require to be renewed annually.

The object of service being to give the respondent notice of the application, the primary consideration, where personal service cannot be effected, is how notice of the application can best be brought to the personal attention of the respondent. A copy of the notice and petition should be left at or mailed registered, postage prepaid, to the last known place of residence and last known address of the respondent. A copy should also be delivered or similarly mailed to any relative or other person known or likely or believed to be in communication with the respondent, and even though the relative is not known to be in communication with the respondent, it is advisable to serve him and such relative or other person should be asked for the respondent's address, and the reply received should be set out in the affidavit. If the respondent has a solicitor or business agent, a copy of the papers should be given to him. If the respondent is known to be residing temporarily at some address, other than that of his ordinary residence, attempts to serve him there should be made, and copies of the papers should be left there for

him. If there is reason to believe that the respondent is aware of the proceedings and has evaded service, such facts should be set out in the declaration or affidavit. In fact the declaration or affidavit should show that every reasonable attempt has been made to effect service or to bring notice of the application to the attention of the respondent.

The respondent's solicitor will ascertain the date of hearing by reference to the Notice of the Sittings of the Committee, which is posted in the lobby of the Senate.

Month in this rule means calendar month.

In the Ash Case, 1887, the whereabouts of the respondent William Manton were unknown. Susan Ash, his wife, was applying for divorce on the ground of desertion and because the respondent had obtained a divorce in the United States and had remarried.

The several declarations of attempted service showed the following facts: That William Manton was reputed to reside in the City of Boston or in West Medford, Massachusetts, and that true copies of the notice were mailed in the Ottawa Post Office to him at each place, postage prepaid.

That respondent had obtained a divorce, in the Supreme Court of the City of Suffolk in the State of Massachusetts, from Susan

Ash, and had afterwards married a Miss Mary Hatch and was cohabiting with her, as man and wife, in the City of Boston.

That deponent had made several attempts to discover the place of residence of respondent, that he had enquired of Joseph Manton of Montreal, respondent's uncle, as to respondent's place of residence, but could get no information. That he had employed a detective agency to trace respondent without success. That he believed respondent, having been informed that he was liable to be prosecuted for bigamy, was hiding and passing under an assumed name. That enquiries had been made of Catharine Hatch, mother of Mary Hatch, as to respondent's whereabouts, and that she had stated that respondent had taken up his residence in West Medford. That a copy of said notice had been served on respondent's uncle, who had stated that he had not heard from respondent for many years, to wit, since he left Canada. That a copy of the notice had been served on Catharine Hatch.

These attempts to serve were held by the Committee to be sufficient.

RULE 138.

PRESENTATION OF PETITION.

No petition for a bill of divorce shall be presented to the Senate after the first sixty days of the Session.

NOTE.

The time for receiving petitions is frequently extended, but if for reasons beyond the control of the petitioner it has been impossible to present the petition before the expiry of the time, a petition for leave to present the petition may be resorted to, and if the Senate is satisfied that the delay is reasonably accounted for, leave to present the petition is usually granted.

RULE 141.

REFERENCE OF PETITION TO COMMITTEE—DUPLICATE COPIES OF PETITION AND ALL OTHER PAPERS TO BE FURNISHED TO COMMITTEE.

The petition when presented to the Senate shall be accompanied by the evidence of the publication of the notice as required by Rule 136, and by declaration in evidence of the service of a copy of the notice and of a copy of the petition as provided by Rule 137. The petition, notice, and evidence of publication

and service, and all papers connected therewith, shall thereupon stand as referred, without special order to that effect, to the Standing Committee on Divorce.

A copy of every petition for a bill of divorce, or relating to any matter arising out of an application for divorce and of every document and paper accompanying such petition or produced in evidence before the Committee, shall be furnished to the Committee by the person on whose behalf the petition, document or paper is presented or produced.

NOTES.

The solicitor must be careful to see that the petition when presented to the Senate is accompanied by,

(*1*) Evidence, by Statutory Declaration, of publication in the newspaper for 14 consecutive weeks, and in the Gazette for the same time. Copies of the newspapers containing the first and last insertions should be furnished to the Clerk of the Committee.

(*2*) Evidence, by Statutory Declaration or affidavit, of service of a copy of the notice and of a copy of the petition on the respondent, or the like evidence of attempts to serve the respondent.

A duplicate copy of the petition and of the foregoing declarations and of every docu-

ment intended to be used as evidence before the Committee, viz., the marriage certificate, letters, etc., must be left with the Clerk of the Committee.

RULE 140.

PAYMENT OF FEES.

No petition for a bill of divorce shall be considered by the Committee unless the applicant has paid into the hands of the Clerk of the Senate the sum of two hundred dollars, towards expenses which may be incurred during the proceedings upon the petition and the bill, and also the sum of ten dollars to pay for translating and printing 600 copies of the bill in English and 200 copies in French. The translation shall be made by the translators of the Senate, and the said sums shall be subject to the order of the Senate.

NOTES.

The House fees on a Bill of Divorce amount to $210.00, which must be paid to the Clerk of the Senate before the petition will be considered by the Committee. If the applicant is too poor to pay the fees a petition should be presented on his behalf, before the presentation of the petition for divorce,

setting out the particulars of the intended application for divorce, the needy circumstances of the petitioner and all such other facts as would justify the House in allowing the petitioner to proceed in forma pauperis. The petition should be verified by statutory declaration.

By Rule 114 the fee payable on any private bill is paid in the House in which it is introduced.

RULE 142.

PROOF OF PUBLICATION AND OF SERVICE—ORDER FOR SUBSTITUTIONAL SERVICE—NON-COMPLIANCE WITH RULES.

The Committee shall examine the notice of application to Parliament, the petition, the information endorsed upon or appended to the petition, the evidence of publication of the notice, the evidence of the service of a copy of the notice and of a copy of the petition, all other papers referred with the petition, and also the notice, if any, given by the respondent to the Clerk of the Senate.

2. If any proof is found by the Committee to be defective, it may be supplemented by statutory declaration to be laid before the Committee.

3. If the circumstances of the case seem so to require, the Committee, before proceeding to hearing and inquiry as hereinafter required, may make such order as to the Committee seems requisite and just for effecting substitutional service by advertisement, registered letter, or otherwise, upon both or either of the parties.

4. If the requirements of these rules, or of any order made thereunder by the Committee, have not been complied with in any material respect, the Committee shall report thereon to the Senate, and shall not, without further order from the Senate, proceed to hear and inquire into the matters set forth in the petition.

5. If the requirements of these rules or of any order made thereunder by the Committee, have been complied with in all material respects, the Committee shall, after reasonable notice to the parties, proceed with all reasonable despatch to hear and to inquire into the matters set forth in the petition and shall take evidence upon oath touching the right of the petitioner to the relief prayed for.

NOTES.

In the case of Private Bills, other than Divorce Bills, proof of publication is submitted to the Standing Orders Committee of the

Senate. In the case of Divorce Bills the sufficiency of the proof of publication is determined by the Committee on Divorce.

Notice of the date and time of sitting of the Committee is given by posting the same in the lobby of the Senate.

RULE 134.

REPORTING OF EVIDENCE.

The Official Reporters of the Senate, or one of them, when notified by the Chairman, shall be in attendance at each sitting of the Committee, and, having first been duly sworn to discharge faithfully such duty, shall take down in shorthand and afterwards extend the evidence of witnesses examined before the Committee, which evidence shall be printed under the supervision of the Clerk of the English Journals.

NOTE.

The evidence must be taken in shorthand by one of the official reporters of the Senate. It is afterwards extended and printed at the Government Printing Bureau. The evidence is not signed by the witnesses.

RULE 145.

EVIDENCE NECESSARY TO SUPPORT BILL—DEFENCES ADMISSIBLE — INTERVENTION OF MINISTER OF JUSTICE.

If adultery be proved, the party from whom the divorce is sought may nevertheless be admitted to prove connivance at, or condonation of the adultery, collusion in the proceedings for divorce, or adultery on the part of the petitioner.

Connivance at, or condonation of the adultery, or collusion in the proceedings for divorce, is always a sufficient ground for rejecting a Bill of Divorce, and shall be inquired into by the Committee. And should the Committee have reason to suspect connivance or collusion, and in their opinion it is desirable that fuller inquiry should be made, such opinion and the reasons therefor shall be communicated to the Minister of Justice, that he may intervene and oppose the bill should the interest of public justice in his opinion call for such intervention. B. 812, sq.

NOTES.

The adultery charged must have been committed by one of the consorts since the celebration of the marriage in question. It is not necessary in order to succeed to prove the direct fact of adultery, or even a fact of adul-

tery as to time and place. In nearly every case the fact is inferred from proof of circumstances which show the opportunity for the act, and which lead to the conclusion that it occurred.

The Committee will scrutinize with great care a case where only a single witness testifies to the fact of adultery, and especially if that witness is a woman of loose character with whom the act is said to have been committed.

The evidence of the husband or wife alone, unless corroborated by another witness, or by strong circumstantial evidence, and particularly where the fact is sought to be proved by admission, is not sufficient.

Proof that the respondent has contracted a venereal disease, not from the petitioner, is sufficient evidence of adultery. Venereal disease in itself is uncertain evidence as it is consistent with the husband's adultery, with the wife's adultery and with accidental communication of the disease. In *Browning* v. *Browning* (1911), p. 161, it was held that it is sufficient for a wife to prove that she was infected by the husband and it is then for him to prove that the disease was communicated in such circumstances as not to amount to legal cruelty. Proof that the respondent is suffering from venereal disease must be given by medical testimony; no other evidence will be accepted by

the Committee. Proof that the respondent travelled with a person of the opposite sex, not the petitioner, and that they registered as man and wife at a hotel and occupied the same room, is sufficient. Proof that the respondent visited a brothel is sufficient, unless it be shown absolutely and by unimpeachable evidence that the visit was innocent. If the petitioner's wife gives birth to a child, of which in point of time the petitioning husband could not have been the father, that also is sufficient.

The first step before the Committee at the hearing is to prove a valid marriage, as without a valid marriage there can be no adultery. Proof of such a marriage involves proof of the identity of the parties. It must be shown by satisfactory evidence that the persons, whose marriage it is sought to dissolve, are the persons between whom the marriage was solemnized.

In addition to the evidence of the petitioner as to the fact of marriage and identity of parties it is usual to produce and file with the Committee a certificate of marriage, signed by the officiating Minister, or to produce and prove an examined copy of the entry in the marriage register, or to file a certificate signed by the Registrar-General, where the marriage was performed in any of the provinces of Canada having such an officer. Where it is intended to prove a marriage by

a certificate of marriage signed by the officiating minister, evidence must be given that the signature on the certificate is that of the officiating minister and that such minister performed the ceremony. The identity of the parties should be established by a witness who was present at the marriage, or if such a witness cannot be obtained then a witness who knew the parties when they were living together as man and wife. Photographs are frequently used as a means of proving identity. The best and most direct proof possible of marriage and identity should be given. If a case should arise where the production of a certificate is impossible the fact of marriage may be proved by the evidence of witnesses who knew the parties and know that for a considerable time they cohabited as man and wife, as such evidence raises a presumption of lawful marriage which can only be rebutted by the most cogent proof to the contrary. Reference may be made to Phipson on Evidence, 4th Edition, p. 313, et seq., as to the mode of proof of foreign marriages.

When clear proof is given of the celebration of a marriage, followed by cohabitation, everything necessary to the validity of the marriage will be presumed, unless evidence to the contrary is forthcoming. It is not necessary to prove the license, or the publication of banns, or the capacity of the parties to enter into the contract.

Where the marriage was performed in Ontario a certificate, signed by the Registrar-General, is, under the Vital Statistics Act, c. 49 of R. S. O. 1914, prima facie evidence of the facts certified to be recorded. In Quebec, under the Civil Code, the churches are required to keep registers in duplicate which are in charge of the rectors, priests, or ministers, and in which acts of civil status are to be entered, one of which registers, within the first six weeks of each year, is deposited in the office of the Prothonotary of the Superior Court of the District, or in the office of the Clerk of the Circuit Court, and the other of such registers remains in the custody of the priest, or minister who kept the same. Extracts from such registers, given by either depositary and being signed and certified by him, are authentic.

In Manitoba, under the Vital Statistics Act, Revised Statutes, 1913, c. 203, s. 28, every person who solemnizes a marriage is required to report the same to the Division Registrar within fifteen days thereafter. If default is made in giving the notice required by section 28 the division registrar is authorized by section 29 to register the marriage at any time within 12 months after the performance of the ceremony, if furnished with the necessary information, but thereafter registration can only be made by the Minister in

charge of the Department. By section 53 of the Act the registers kept by the Roman Catholic, Anglican, Presbyterian, Methodist or other clergy in the Province, or in the territory now comprising the Province prior to the passing of Chapter 8 of the Statutes of 1881, and which are or may be deposited with the Minister, are declared to be authentic, and copies of registers, authenticated under the signature of the Minister of the Department, are declared to be competent evidence in all cases in which the original records could be evidence.

In Saskatchewan, under the Vital Statistics Act, Revised Statutes, 1909, c. 21, s. 11, every clergyman, minister or other person, authorized by law to celebrate marriage, is required to make a report to the Division Registrar of every marriage which he celebrates within one month after celebration, and by section 20 such Division Registrar is required to forward the returns to the Department. By section 20, sub.-sec. 3, extracts from such returns, certified by the Minister of the Department, are declared to be evidence of the entry and prima facie evidence of the facts therein stated.

In Alberta, the Vital Statistics Act, c. 13 of the Statutes of 1907, contains in sections 11, 17 and 30 provisions similar to those in the Vital Statistics Act of Saskatchewan.

In the North-West Territories, after the passing of Ordinance No. 9 of 1878, which became law on the 2nd of August, 1878, marriages could be validly celebrated by Justices of the Peace, as well as by ministers and clergymen of every religious denomination. By section 10 of the Ordinance, the person solemnizing the marriage was to keep duplicate certificates in a prescribed form, one of which he was required to transmit to the Registrar of Deeds for the Territories, who, by section 12, was required to furnish a copy of the record of any certificate of marriage, which copy, certified by the Registrar, is prima facie evidence of the marriage named therein.

The above Ordinance was repealed, on the 10th of June, 1881, by Ordinance No. 7 of 1881, by which authority was given to Commissioners, appointed for that purpose, to celebrate marriages, as well as ministers and clergymen. Under this Ordinance the returns are made to the General Registrar of Deeds for the North-West Territories, whose certificate is prima facie evidence of the marriage.

By the Revised Ordinances of 1888, No. 6, registration divisions were established, and every person, authorized by law to celebrate marriages, was required to make returns to the Registrar of the Division. By section 5 of the Ordinance, the Division Registrar was

required to make returns to the Registrar General, whose certificate is declared, by section 21, to be prima facie evidence of the facts therein stated. By Ordinance No. 7 of 1889 the Division Registrars are required to keep duplicate records and certificates given by such Registrars are declared to be prima facie evidence of the facts stated therein.

The Vital Statistics Ordinance of 1897, being No. 34, contains provisions similar to those of Vital Statistics Ordinance which appears at page 1245 in the Revised Ordinances of 1905. This Act will also be found as Chapter 14 of the Consolidated Ordinances of the North-West Territories published in 1907.

By Ordinance 37 of 1904 the power to celebrate marriage was extended to Commissioners and staff officers of the Salvation Army.

Proof should also be given that the husband and consequently the wife, were domiciled in Canada when the proceedings were commenced. If the wife is petitioning and has been deserted by her husband, who has gone to a foreign country, and the parties were domiciled in Canada at the time of desertion and the wife is so domiciled when she commences proceedings, it is presumed, unless evidence to the contrary is offered, that the husband has not gone abroad with the intention of acquiring a fresh domicile. Such domicile having been established, Parliament has

jurisdiction to decree divorce no matter when the marriage was contracted, or where the misconduct took place, and whether the parties are British subjects or not. Residence merely in Canada, short of domicile, is not sufficient to give jurisdiction.

It is well settled in the American Courts that a wife has power for the purpose of divorce to obtain a domicile separate from that of her husband. Such is not the law in Canada, although so eminent a Judge as Sir Robert Phillimore expressed his opinion in *Le Sueur* v. *Le Sueur,* I. P. D. 139 (1876), that after desertion by the husband the deserted wife could acquire a domicile of her own. It must also be remembered that, in the Harris Case (1845), although the Bill was passed, it was disallowed by Her Majesty because neither of the parties was domiciled in Canada at the date of the passing of the Bill.

In *Le Mesurier* v. *Le Mesurier* (1895), A. C. 517, the Judicial Committee of the Privy Council held, that the only true test of jurisdiction to decree divorce according to international law is the domicile for the time being of the consorts. It is consequently of the utmost importance in considering whether or not Parliament has jurisdiction in any particular case to have a clear conception of the exact meaning of the word "domicile."

The following extract from Professor Dicey's well known work on The Conflict of Laws will be found of assistance in determining whether or not the domicile of the intending applicant is such as to give Parliament jurisdiction.

"Domicile" means the country which . . . is considered by law to be a person's permanent home.

"Independent person" means a person who as regards his domicile is not legally dependent upon the will of any other person.

"Dependent person" means any person who is not an independent person as herein, before defined and includes,

(*a*) A minor,

(*b*) A married woman.

Rule 1. The domicile of any person is, in general, the place or country which is, in fact, his permanent home, but is in some cases the place or country which, whether it be in fact his home or not, is determined to be his home by a rule of law.

Rule 2. No person can at any time be without a domicile.

Rule 3. Subject to the exception hereinafter mentioned, no person can have at the same time more than one domicile.

Exception. A person within the operation of the Domicile Act, 1861, 24 and 25 Vict., c. 121, may possibly have one domicile for the purpose of testate or intestate succession and another domicile for all other purposes.

Rule 4. A domicile once acquired is retained until it is changed.

(*a*) In the case of an independent person, by his own act.

(*b*) In the case of a dependent person, by the act of some one on whom he or she is dependent.

Rule 5. Every independent person has at any given moment either

(*a*) The domicile received by him at his birth (which domicile is hereinafter called the domicile of origin), or

(*b*) A domicile (not being the same as his domicile of origin) acquired or retained by him while independent by his own act (which domicile is hereinafter called a domicile of choice).

Rule 6. Every person receives at (or as from) birth a domicile of origin.

(*a*) In the case of a legitimate child born during his father's lifetime, the domicile of origin of the child is the domicile of the father at the time of the child's birth.

(*b*) In the case of an illegitimate or posthumous child, the domicile of origin is the domicile of the mother at the time of birth.

(*c*) In the case of a foundling, the domicile of origin is the country where he was born or found.

(*d*) In the case of a legitimated person, the domicile which his father had at the time of such person's birth becomes and is considered to be the domicile of origin of such person.

Rule 7. Every independent person can acquire a domicile of choice, by the combination of residence (*factum*) and intention of permanent or indefinite residence (*animus manendi*) but not otherwise.

Rule 8. (*a*) The domicile of origin is retained until a domicile of choice is in fact acquired.

(*b*) A domicile of choice is retained until it is abandoned, whereupon either,

(*1*) A new domicile of choice is acquired, or

(*2*) The domicile of origin is resumed.

Rule 9. The domicile of every dependent person is the same as, and changes (if at all) with the domicile of the person on whom he is, as regards his domicile, legally dependent.

Sub-Rule 1. Subject to the exceptions hereinafter mentioned, the domicile of a minor is, during minority, determined as follows:—

(*1*) The domicile of a legitimate or legitimated minor is during the lifetime of his father the same as, and changes with, the domicile of his father.

(*2*) The domicile of a minor, without living parents, or of an illegitimate minor, without a living mother, is the same as, and changes with, the domicile of his guardian, or may be changed by his guardian.

Exception 1 to Sub-Rule. The domicile of a minor is not changed by the mere remarriage of his mother.

Exception 2 to Sub-Rule. The change of a minor's home by a mother or guardian does not, if made with a fraudulent purpose, change the minor's domicile.

Sub-Rule 2. The domicile of a married woman is during coverture the same as, and changes with, the domicile of her husband.

Rule 10. A domicile cannot be acquired by a dependent person through his own act.

Sub-Rule 8. Where there is no person capable of changing a minor's domicile, he retains, until the termination of his minority, the last domicile which he has received.

Rule 11. The last domicile which a person receives whilst he is a dependent person, continues on his becoming an independent person, unchanged until it is changed by his own act.

Sub-Rule 1. A person on attaining his majority retains the last domicile which he had during his minority until he changes it.

Sub-Rule 2. A widow retains her late husband's last domicile until she changes it.

Sub-Rule 3. A divorced woman retains the domicile which she had immediately before or at the moment of divorce, until she changes it.

Rule 12. The domicile of a person can always be ascertained by means of either,

(*1*) A legal presumption,

(*2*) The known facts of the case.

Rule 13. A person's presence in a country is presumptive evidence of domicile.

Rule 14. When a person is known to have had a domicile in a given country he is presumed, in the absence of proof of a change, to retain such domicile.

Rule 15. Any circumstance may be evidence of domicile which is evidence either of a person's residence (*factum*) or of his intention to reside permanently (*animus manendi*) within a particular country.

Rule 16. Expressions of intention to reside permanently in a country are evidence of such intention, and in so far, evidence of domicile.

Rule 17. Residence in a country is prima facie evidence of the intention to reside there permanently (*animus manendi*) and, in so far evidence of domicile.

Rule 18. Residence in a country is not even prima facie evidence of domicile when the nature of the residence either is inconsistent with, or rebuts the presumption of the existence of, an intention to reside there permanently (*animus manendi*).

Persons whose employment rebuts the presumption of residence are said by Professor Dicey to be,

1. Prisoners.
2. Convicts,
3. Exiles or refugees,
4. Lunatics,
5. Invalids residing abroad on account of health,
6. Officials generally,
7. Ambassadors,
8. Consuls,
9. Persons in military or naval service,
10. Persons in Indian service,
11. Ecclesiastics,

12. Servants,
13. Students.

It is apparent therefore that there are three kinds of domicile,

1. Domicile of origin,
2. Domicile by law,
3. Domicile of choice.

Lord Wensleydale has defined Domicile as "habitation in a place with the intention of remaining there forever, unless some circumstances should occur to alter that intention."

Domicile of origin is not the place where a person happens to be born; but the home of his parents, where they are known.

Domicile by law is that domicile which the law assigns to those who are dependent upon others.

The husband's actual, and the wife's legal, domicile are the same, no matter where the wife may be personally living, and during the marriage the wife cannot acquire a separate domicile for herself.

The domicile of a child is that of his father while he is an infant. Upon the death of the father a domicile acquired by the widow becomes that of the infant.

Domicile of choice arises where a person, having the power to change his domicile, voluntarily abandons his existing domicile and settles in another country with the intention of permanently residing there.

The burden of proof is on the party setting up the abandonment of the domicile of origin, the presumption of law being against such intention. The acquisition of a new domicile is a question of fact not of law.

Rule 48. The Court has jurisdiction to entertain proceedings for the dissolution of the marriage of any parties domiciled in England at the commencement of the proceedings.

This jurisdiction is not affected by,—

1. The residence of the parties, or
2. The allegiance of the parties, or
3. The domicile of the parties at the time of the marriage or
4. The place of the marriage, or
5. The place where the offence in respect of which the divorce is sought is committed.

Rule 49. Subject to the possible exception hereinafter mentioned the Court has no jurisdiction to entertain proceedings for the dissolution of the marriage of any parties not domiciled in England at the commencement of the proceedings. Exception,

In the following circumstances, that is to say,—

1. Where a husband has,

(*a*) Deserted his wife, or

(*b*) So conducted himself towards her that she is justified in living apart from him, and

2. The parties have up to the time of such desertion or justification been domiciled in England, and

3. The husband has after such time acquired a domicile in a foreign country but the wife has continued to reside in England.

The Court (*semble*) has on the petition of the wife jurisdiction to grant a divorce.

Rule 86. The Courts of a foreign country have jurisdiction to dissolve a marriage of any parties domiciled in such foreign country at the commencement of the proceedings for divorce.

This rule applies to,—

1. An English marriage,
2. A foreign marriage.

(*a*) A foreign divorce is not valid which is obtained by the collusion or fraud of the parties.

(*b*) A foreign divorce is not valid if the proceedings are conducted in anyway contrary to natural justice.

Rule 87. Subject to the possible exception hereinafter mentioned, the Court of a foreign country has no jurisdiction to dissolve the marriage of parties not domiciled in such foreign country at the commencement of the proceedings for divorce.

Exception:

The Courts of a foreign country where the parties to a marriage are not domiciled. have jurisdiction to dissolve their marriage, if the divorce granted by such Courts would be held valid by the Courts of the country where, at the time of the proceedings for divorce, the parties are domiciled.

The next step before the Committee is to prove the adultery of the respondent, or such other ground for relief as may have been set forth in the petition. Evidence should also be given as to the terms upon which the parties lived together while cohabitation continued, and if the adultery complained of occurred after separation, it should be shown that the separation was not due to the fault of the petitioner. The petitioner should also specifically deny condonation, collusion and connivance.

By way of defence the respondent may,—

1. Deny the facts alleged in the petition. The burden of proof is on the petitioner, who

must establish, by the evidence of himself and his witnesses, all the facts necessary to entitle him to relief: or allege

2. Condonation:—which is complete forgiveness of all such previous misconduct as is known or believed to have occurred subject to the express or implied condition that no further matrimonial offence shall occur. If, after condonation, there should be a repetition of the offence, such repetition nullifies the condonation, and the previous cause of complaint revives.

Condonation may be the result of express agreement, or it may be implied from cohabitation after knowledge of the previous offence, but resumption of sexual intercourse is not absolutely conclusive of condonation by a wife. It is a question of fact for the Committee. Forgiveness of marital infidelity is not to be presumed.

3. Collusion:—This may be defined as a conspiracy between the husband and wife to obtain a divorce by suppression of the facts or by false manufactured testimony. It is the result of agreement, between the petitioner and the respondent, by which the respondent is to commit or seem to commit the offence to enable the petitioner to procure the divorce, or under which no defence is to be offered to the petition. Parties to divorce proceedings

should remain at arm's length. Communications between them, with a view to facilitating the application, give rise to a suspicion of collusion which may be difficult to rebut.

4. Connivance:—This differs from condonation in that it precedes the commission of the offence which is complained of, while condonation can only occur after the offence has happened. Connivance is the consent or indifference of the complainant to the misconduct of which he complains as a cause for divorce. Where adultery is committed by one of the consorts by collusion with the other, there is necessarily also connivance.

5. Adultery on the part of the petitioner: In cases not provided for in the rules the principles upon which the Imperial Parliament proceeds in dissolving marriage are to be applied to divorce proceedings before the Committee (Rule 152). It was always the practice in the House of Lords to reject evidence of the petitioner's adultery where it occurred after the commission of the adultery of which he complained. Where, however, the adultery of the petitioner occurred before that of the respondent the House of Lords always refused to pass the Bill.

6. Void Marriage:—Since no divorce can be granted where no valid marriage relation exists it is, of course, a complete defence that the marriage is for some reason void, as that

at the time the marriage was celebrated one of the parties was already married, and had a husband or wife living, and that such prior marriage had not been dissolved.

7. No Marriage:—It is a good defence that the parties were not married, or that their cohabitation was illicit when commenced and continued to be so.

8. Insanity when the adultery was committed, has been held to be a good defence in the United States, because the offence is not committed voluntarily, and the offender was incapable of distinguishing between right and wrong, or of understanding the nature of the act. This would probably be considered a sufficient answer to a petition by the Committee.

9. The granting or rejecting of a petition being discretionary with Parliament it is competent for the respondent to set up by way of defence the delay of the petitioner in instituting proceedings, as from such delay both connivance and condonation may be inferred. Want of means has always been considered by Parliament a sufficient excuse for delay in presenting a bill for divorce. The respondent may also give evidence of cruelty, of wilful and inexcusable desertion, of separation, of neglect, or of conduct on the part of the petitioner conducing to the adultery complained of.

On this subject Sir Cresswill Cresswill says: "It must not be supposed that a husband can neglect and throw aside his wife, and afterwards if she is unfaithful to him, obtain a divorce on account of her infidelity."

RULE 143.

REPORT BY COMMITTEE—DRAFT BILL—MINORITY REPORT.

After such hearing and inquiry the Committee shall report to the Senate, stating whether the requirements of these rules have been complied with in all material respects; and, if it shall have been then found that any such requirement has not been so complied with, stating in what respect there has been default, and also stating the conclusions arrived at and the action recommended by the Committee.

2. The report shall be accompanied by the testimony of the witnesses examined, and by all documents, papers and instruments referred to the Committee by the Senate or received in evidence by the Committee.

3. If the report recommends the granting of relief to the petitioner it shall also be accompanied by a draft approved by the Committee, of a Bill to effect such relief.

4. The minority may bring in a report stating the grounds upon which they dissent from the report of the Committee. B. 809, 814, sq.

NOTES.

After the taking of the evidence the Committee considers the same behind closed doors. If it is decided to report the granting of relief the necessary Bill is prepared by the Law Clerk. In the following cases the preambles have contained no direct and specific charge of adultery against the respondent. The facts leading to an inference of adultery have been stated, but owing to the peculiar circumstances of each case Parliament refrained from stigmatizing, in so many words, the conduct of the respondent as adulterous, viz.: The Lowndes Case, Statutes of 1909, p. 215; The Ridout Case, Statutes of 1909, p. 293; The Hutcheon Case, Statutes of 1914, p. 367.

If the Committee should report against the Bill, or if for any other reason it is not prosecuted to a conclusion, the petitioner is entitled to a return of whatever remains of the deposit after payment thereout of all the necessary expenses.

The Bill is composed of the preamble, which sets forth the facts upon which Parliament bases the relief granted, and two enacting clauses. The first of these declares that

the marriage in question is thereby dissolved and shall be thenceforth null and void to all intents and purposes. The effect of this is to restore the parties to the status which they held before the solemnization of the marriage.

The second clause enacts that the petitioner may at any time thereafter marry any woman whom he might lawfully marry if the dissolved marriage had never been solemnized. Parliament has never made a similar declaration with respect to the rights of the person from whom the divorce is obtained, but as the marriage tie is absolutely dissolved there can be no doubt that each of the parties can lawfully marry again.

Where the circumstances warrant it, Parliament occasionally grants other relief. For instance in the Whiteaves Case, Statutes of 1869, p. xv., the marriage contract was declared void. In the Holliwell Case, Statutes of 1878, p. viii., the husband was debarred from any interest in his wife's estate. In the Riddell Case, Statutes of 1887, p. 336, The Lyon Case, Statutes of 1878, p. v., the Tudor Case, Statutes of 1888, p. 301, the Morrison Case, Statutes of 1888, p. 299, and the Harrison Case, Statutes of 1892, p. 140, the petitioning wives were given the sole custody of the infant children.

In the Campbell Case, Statutes of 1879, p. 91, which was based on desertion, cruelty and

non-support and was an application for separation or divorce *à mensa et thoro,* the Bill provided for separation, maintenance of the wife and children by the husband, the custody of one of the children by the wife, and granted authority to the court to enforce the provisions of the Act. In the Pitblado Case, Statutes of 1905, p. 465, Isaac Pitblado, the petitioner, was awarded the custody of his children.

The view at present held is that the question of custody of children is one falling within the competence of the Courts of the Provinces, and that the making of such a provision would be an interference with civil rights, which, under the constitution, are under the sole control of the Provincial Legislatures.

Notwithstanding this view, cases turning on special circumstances, may arise in which such relief will still be granted.

In the Campbell Case, in which the question of the jurisdiction of Parliament to deal with the custody of children was the subject of much debate both in the Senate and the House of Commons, the contrary view prevailed, maintenance and the custody of children being considered as matters incident to or growing out of the contract of marriage, and so within the jurisdiction conferred on

Parliament under the authority which it has to deal with marriage and divorce.

Unless it should be otherwise provided by the Bill, the effect of divorce is to restore the parties with respect to their property to the position which they would have occupied had the marriage never been solemnized, the wife ceases to have any interest in her husband's estate and retains her own estate free from any claim by him.

RULE 135.

PRINTING OF EVIDENCE.

Evidence taken before the Committee shall be printed apart from the Minutes of Proceedings of the Senate, and only in sufficient numbers for the use of Senators and Members of the House of Commons, that is to say, one copy for distribution to each Senator or Member, ten copies for the parties and their counsel, and twenty-five copies to be kept by the Clerk of the Senate for purposes of record and reference.

NOTE.

The object of this rule is to prevent the indiscriminate distribution of evidence, which is often of an extremely lecherous nature.

RULE 144.

INTRODUCTION OF BILL—FIRST READING.

Upon the adoption of the report of the Committee, the Bill may be presented and read a first time; and thereafter no further reference of the Bill to the Committee shall be necessary, unless so ordered by the Senate.

NOTES.

The Bill should be introduced by the Senator who presented the Petition, and having been read a first time, the Senator in charge then moves that the Bill be placed on the order paper and be read a second time on a date which is then fixed.

On the day so fixed the Senator in charge moves that the Bill be read a second time, and be placed on the order paper for a third reading on a named day.

RULE 146.

COMMITTEE MAY HEAR COUNSEL.

The petitioner, the respondent and, if the Committee sees fit, any other person affected by the proceedings had, may be heard before the Committee in person or by counsel learned

in the law of the bar of any province in Canada. B. 813.

NOTES.

Under this rule counsel only are entitled to appear before the Committee. The proceedings being judicial, counsel appear in their robes. It is not customary to hear more than two counsel for each party.

The following extract is taken from Gemmill on Divorce:

"*Parliamentary Solicitors.*—The services of a Parliamentary Solicitor at Ottawa are indispensable for the safe conduct of a bill of divorce. He should be in attendance at the several meetings of the Select Committee at which steps in the case are taken,—first seeing that all papers or documents leading to proofs, and the petition and the bill are in proper form. An application of a simple character occupies fully six weeks in passing both Houses—during which period it receives three readings in each House, and is before Committees at least half a dozen times; on any one of these occasions important questions touching the case may unexpectedly present themselves, and end in the premature death of the Bill. It will, therefore, be readily seen that a local Solicitor should be authorized to keep a general supervision over the case, and push it on

from one stage to another. Neither the Senator or Member in charge of the Bill, nor the officers of Parliament, are under any obligation to speed it or to bring it to a successful issue. As in Courts of Law, a Solicitor experienced in Parliamentary practice, can materially assist the Committee in securing compliance with the Forms and Procedure and in helping Counsel at the hearing of the evidence, to elicit the facts of a case and apply the legal principles bearing on it."

Even though the respondent does not appear the petitioner must prove his case strictly in all necessary particulars, viz., as to domicile, marriage, identity of parties, the charge upon which the petition is based, and must negative collusion, condonation and connivance.

RULE 147.

PARTIES TO BE EXAMINED ON OATH OR AFFIRMATION—THE CANADA EVIDENCE ACT TO APPLY.

The petitioner and, if the respondent appears, the respondent, and all witnesses produced before the Committee, shall be examined upon oath, or upon affirmation in cases where witnesses are allowed by the law of Canada to affirm; and the law of evidence shall, subject to the provisions in these rules, apply to proceedings before the Committee, and shall be observed in all questions of fact.

2. Declarations allowed or required in proof, may be made under *The Canada Evidence Act, 1893.*

NOTES.

It is usual for the Chairman of the Committee to administer the oath or affirmation to each witness. By section 30 of the Revised Statutes of Canada, chapter 10, it is provided that any oath or affirmation under this Act may be administered by:—

(*a*) The Speaker of the Senate.

(*b*) The Chairman of any Committee of the Senate.

(*c*) Such person or persons as may from time to time be appointed for that purpose, either by the Speaker of the Senate ..... or by any standing order of the Senate.

No standing order on the subject has been passed by the Senate.

Even though the application is not opposed, the petitioner must prove his case strictly in every particular, viz.: as to domicile, marriage, identity, and the offence in respect of which relief is sought.

The former rule provided that the rules of evidence in force in Canada as to indictable offences should apply to proceedings before the Committee.

The present rule makes the law of evidence contained in *The Canada Evidence Act,*

R. S. C., chapter 145, apply to divorce proceedings.

RULE 148.

SUMMONS FOR WITNESSES — SERVICE—TAXATION OF EXPENSES.

Summonses for the attendance of witnesses and for the production of papers and documents before the Senate or the Standing Committee on Divorce shall be under the hand and seal of the Speaker of the Senate, and may be issued by the Clerk of the Committee, at any time after the date of the hearing has been appointed, to the party applying therefor.

Such summonses may be served by any literate person, or, if so ordered by the Senate or by the Committee on Divorce, shall be served by the Gentleman Usher of the Black Rod or by any one authorized by him to make such service.

The reasonable expenses of making such service and the reasonable expenses of every witness for attending in obedience to such summons shall be taxed by the Chairman of the Committee. B. 813.

NOTE.

Summonses are obtainable from the Law Clerk of the Senate, who is the Clerk of the

Committee. They are not issued in blank; the solicitor in charge is required to furnish the name and address of each witness who is to be summoned. Personal service is required accompanied by payment of travelling expenses. Any literate person is competent to effect service. The Chairman of the Committee has power to fix the amount payable to each witness for his time and expenses. No tariff of fees and expenses has been established. In view of the importance of divorce applications the cautious solicitor will not adhere strictly to court tariffs, but will see that the witness is properly compensated for his time and trouble.

RULE 149.

DISOBEDIENCE OF WITNESS—COMMITTAL TO CUSTODY.

In case any witness upon whom such summons has been served refuses to obey the same, such witness may by order of the Senate be taken into custody of the Gentleman Usher of the Black Rod, and shall not be liberated from such custody except by order of the Senate and after payment of the expenses incurred. B. 814.

NOTE.

Where a witness, who has been properly served with a summons and who has been paid

or tendered his proper expenses, refuses to obey the summons, the Committee will make a special report of the circumstances to the House, and an order will then be made by the House requiring such witness to attend. In default, he may be ordered to be taken into the custody of the Usher of the Black Rod. Such an order becomes ineffective on the prorogation of Parliament. The expenses referred to are those incurred in arresting and maintaining the witness while in custody.

RULE 150.

FORMS.

The subjoined forms, varied to suit the circumstances of the case, or forms to the like effect, may be used in proceedings for divorce.

NOTE.

While strict compliance with the forms is not essential, the solicitor must be careful to see that all facts necessary to give full notice of the grounds on which the divorce is sought are alleged with particularity.

RULE 151.

RULES OF SENATE TO APPLY.

All rules of the Senate which by reasonable intendment are applicable to proceedings

in divorce, shall, except in so far as altered or modified by these rules, or inconsistent therewith, apply to such proceedings.

RULE 152.

PROVISION FOR CASES NOT PROVIDED FOR IN THE RULES.

In cases not provided for by these rules the general principles upon which the Imperial Parliament proceeds in dissolving marriage and the rules, usages and forms of the House of Lords in respect of divorce proceedings may, so far as they are applicable, be applied to divorce proceedings before the Senate and before the Standing Committee on Divorce.

NOTE.

This rule is permissive merely, not imperative, and though the Senate in divorce legislation looks to the House of Lords for the purpose of ascertaining the course followed there, it has never felt itself bound to accept the decision of the House of Lords as binding and conclusive. The Senate follows precedents when they commend themselves to the judgment of the Senate, and not otherwise, the decision of the House of Lords on Bills of Divorce not having the weight which attaches to the decisions of the ordinary legal tribunals.

CHAPTER IV.

PROCEDURE IN THE HOUSE OF COMMONS.

The House of Commons not having passed any special rules relating to Divorce Bills, such bills are in that House governed by the rules and practice relating to Private Bills.

As already mentioned, according to Rule No. 51 of the Commons Private Bills require two months advertising in the *Canada Gazette* and in the local newspaper. In practice the advertisement in accordance with the Senate rule serves for the Commons, subject only to this difference, that for the latter, the advertisement must be published for two months during the interval of time between the close of the preceding Session and the consideration of the petition. Rule 51.

Copies of the newspapers, containing the first and last insertion of the notice accompanied by a statutory declaration of publication, should be filed with the Clerk of the Standing Orders Committee.

There is no rule of the House of Commons requiring service on the respondent.

The House fees having been paid in the Senate, where the bill originated, no further fee is payable in the House of Commons.

The proceedings in the Commons are initiated by the presentation of a petition addressed to "The Honourable The House of Commons in Parliament assembled," and otherwise identical in form with that presented in the Senate. This petition must be signed by the applicant, and should be handed to a member of the House to be presented within the first three weeks of the session. Rule 49.

The petition, having been presented, goes without special order to the Committee on Standing Orders, Rule 53, to report on the due publication of the advertisement, and to see that the petition does not ask any relief other than that of which notice has been given by advertisement.

Upon the Committee reporting that the rules have been duly complied with, no further step is taken in the House of Commons until the Bill is sent down from the Senate.

The Bill having been passed by the Senate is sent down to the House of Commons for consideration, accompanied by a copy of the evidence, it is then read a first time in the Commons, and placed on the order paper for a second reading, after which the Bill and the evidence are referred to the Private Bills Committee for consideration. Each member of the House is furnished with a copy of the evidence.

When the Bill comes before this Committee, the evidence is considered. Frequently a discussion occurs as to the sufficiency of the evidence. If the Bill passes the Committee the Chairman so reports to the House.

If the report is adopted by the House, the Bill is placed on the order paper for the following day for consideration in Committee of the whole, and after such consideration and report by the Committee, the Bill is read a third time and passed.

The final act in the passing of a Private Bill is obtaining the Royal assent. This is occasionally given, to Bills that have passed both Houses, from time to time during the Session, or otherwise at the conclusion of the Session. It is the duty of the solicitor in charge of a Bill to see that it is included in the list of Bills submitted for the Royal assent.

RULES OF THE SENATE RELATING TO DIVORCE.

Petitions, &c., referred to Committee on Divorce.

133. All petitions for divorce and all matters arising out of petitions for, or bills of divorce, shall be referred to the Standing Committee on Divorce, and no reference to any Committee other than that Committee shall be necessary with respect to such petitions, bills and matters. B. 800, sq.

Notice of meetings of Committee.

Notice of the day, hour and place of every sitting of the Committee shall be given by posting up the same in the lobby of the Senate not later than the afternoon of the day before the time appointed for such sitting. B. 807.

Reporting and printing of evidence.

134. The Official Reporters of The Senate, or one of them, when notified by the Chairman, shall be in attendance at each sitting of the Committee, and, having first been duly sworn to discharge faithfully such duty, shall take down in shorthand and afterwards extend the evidence of witnesses examined before the Committee, which evidence shall be printed under the supervision of the Clerk of the English Journals. B. 807.

Evidence, how printed.

135. Evidence taken before the Committee shall be printed apart from the

Minutes of Proceedings of the Senate, and only in sufficient numbers for the use of Senators and Members of the House of Commons, that is to say, one copy for distribution to each Senator or Member, ten copies for the parties and their counsel, and twenty-five copies to be kept by the Clerk of the Senate for purposes of record and reference. B. 815.

Notice of application, how given.

136. Every applicant for a Bill of Divorce shall give notice of his or her intended application, and shall specify therein from whom and for what cause such divorce is sought, and shall cause such notice to be published during at least three months before the consideration by the Committee on Divorce of his or her petition for the said Bill, in the *Canada Gazette* and in two newspapers published in the district in Quebec, Manitoba, Saskatchewan, Alberta, British Columbia or the North-west Territories, or in the county or union of counties in other provinces, wherein such applicant usually resided at the time of the separation of the parties; but if the requisite number of papers cannot be found therein, then in an adjoining district or county or union of counties.

Provisions as to notice.

Notices given in the Provinces of Quebec and Manitoba are to be published

in one English and one French newspaper, if there be such newspapers published in the district, but otherwise shall be published in one newspaper in both languages. The notice may be in the subjoined form " A." If a notice given for any session of Parliament is not completed in time to allow the petition to be dealt with during that session, the petition may be presented and dealt with during the next ensuing session, without any further publication of such notice. B. 802.

Service of Notice and Petition on respondent.

137. A copy of the said notice and a copy of the petition to be presented shall, at the instance of the applicant, and not less than two months before the consideration by the Committee of the petition, be served personally, when that can be done, on the person from whom the divorce is sought, who is hereinafter called " the respondent."

If the residence of the respondent is not known or personal service cannot be effected, then, if it be shown to the satisfaction of the Committee that all reasonable efforts have been made to effect personal service, and, if unsuccessful, to bring such notice and petition to the knowledge of the respondent, what has been done may be deemed and taken by

the Committee as sufficient service. B. 803.

138. No petition for a Bill of divorce shall be presented to the Senate after the first sixty days of the Session. B. 805. Petition, when received.

139. The petition of an applicant for a Bill of divorce must be fairly written and must be signed by the petitioner, and should briefly set forth the marriage, the names in full of the parties thereto, their ages and occupations, when, where and by whom the ceremony was performed, the domicile and residence of each of the parties at the time of the marriage, their matrimonial domicile, residence, and any change thereof, the material facts upon which the petitioner relies as the grounds on which relief is asked, and the nature of the relief prayed for. Form and contents of Petition.

The petition should also negative connivance at, or condonation of the wrong complained of and collusion in the application for divorce.

2. The allegations of the petition must be verified by declaration of the petitioner, under the *Canada Evidence Act*. B. 805. Allegations, how verified.

3. The copy of the petition served upon the respondent shall have endorsed Copy served, how endorsed.

thereon, or appended thereto, the following information:—

(*1*) The petitioner's residence at the time of service.

(*2*) A Post Office address in Canada at which letters and notices for the petitioner may be delivered.

(*3*) The name and address of the solicitor, if any, acting for the petitioner.

(*4*) If such solicitor's address is not at Ottawa, the name and address of some agent for him at Ottawa, upon whom all notices and papers may be served.

(*5*) That if the respondent desires to oppose the granting of the divorce and to be heard by the Senate Committee on Divorce, the respondent must send a notice to that effect to the Clerk of the Senate at the Parliament Buildings, Ottawa, within two months from the date of service upon the respondent, and must in the notice to the Clerk of the Senate give:—

(*a*) The respondent's residence at the time of sending such notice.

(*b*) A Post Office address in Canada at which letters and notices for the respondent may be delivered.

(*c*) The name and address of the solicitor, if any, acting for the respondent.

(*d*) If such solicitor's address is not at Ottawa, the name and address of some agent for him at Ottawa upon whom all notices and papers may be served.

(*6*) That, if the respondent does not so notify the Clerk of the Senate, the petition may be considered, and a Bill of divorce founded thereon may be passed, without any further notice to the respondent.

(*7*) When the petition is one by a husband for a divorce from his wife, that, if the wife shows to the satisfaction of the Senate Committee on Divorce that she has, and is prepared to establish upon oath, a good defence to the charges made by the petition, and that she has not sufficient money to defend herself, the Committee may make an order that her husband shall provide her with the necessary means to sustain her defence, including the cost of retaining Counsel and the travelling and living expenses of herself and of witnesses summoned to Ottawa on her behalf. B. 804 (*t*), seq.

Deposit of fees.

140. No petition for a Bill of divorce shall be considered by the Committee unless the applicant has paid into the hands of the Clerk of the Senate the sum of two hundred dollars, towards expenses which may be incurred during the proceedings upon the petition and the Bill, and also the sum of ten dollars to pay for translating and printing 600 copies of the Bill in English and 200 copies in French. The translation shall be made by the translators of the Senate, and the said sums shall be subject to the order of the Senate. B. 804.

Petition, &c., referred to Committee.

141. The petition when presented to the Senate shall be accompanied by the evidence of the publication and the notice as required by Rule 136, and by declaration in evidence of the service of a copy of the notice and of a copy of the petition as provided by Rule 137. The petition, notice, and evidence of publication and service, and all papers connected therewith, shall thereupon stand as referred, without special order to that effect, to the Standing Committee on Divorce.

Copies of petition, &c., furnished to Committee.

A copy of every petition for a Bill of divorce, or relating to any matter arising out of an application for divorce, and of every document and paper accompanying

such petition or produced in evidence before the Committee, shall be furnished to the Committee by the person on whose behalf the petition, document or paper is presented or produced. B. 806.

142. The Committee shall examine the notice of application to Parliament, the petition, the information endorsed upon or appended to the petition, the evidence of publication of the notice, the evidence of the service of a copy of the notice and of a copy of the petition, all other papers referred with the petition, and also the notice, if any, given by the respondent to the Clerk of the Senate. Committee to examine papers.

2. If any proof is found by the Committee to be defective, it may be supplemented by statutory declaration to be laid before the Committee. Defective proof.

3. If the circumstances of the case seem so to require, the Committee, before proceeding to hearing, and inquiry as hereinafter required, may make such order as to the Committee seems requisite and just for effecting substitutional service by advertisement, registered letter, or otherwise, upon both or either of the parties. Substitutional service.

4. If the requirements of these rules, or of any order made thereunder by the Non-compliance with rules, &c.

Committee, have not been complied with in any material respect, the Committee shall report thereon to the Senate, and shall not, without further order from the Senate, proceed to hear and inquire into the matters set forth in the petition.

When rules complied with, Committee to hear evidence.

5. If the requirements of these rules or of any order made thereunder by the Committee, have been complied with in all material respects, the Committee shall, after reasonable notice to the parties, proceed with all reasonable despatch to hear and to inquire into the matters set forth in the petition and shall take evidence upon oath touching the right of the petitioner to the relief prayed for. B. 807.

Report by Committee.

143. After such hearing and inquiry the Committee shall report to the Senate, stating whether the requirements of these rules have been complied with in all material respects; and, if it shall have been then found that any such requirement has not been so complied with, stating in what respect there has been default, and also stating the conclusions arrived at and the action recommended by the Committee.

Evidence reported.

2. The report shall be accompanied by the testimony of the witnesses examined, and by all documents, papers and instruments referred to the Committee

by the Senate or received in evidence by the Committee.

Draft Bill reported.

3. If the report recommends the granting of relief to the petitioner it shall also be accompanied by a draft, approved by the Committee, of a Bill to effect such relief.

Minority report.

4. The minority may bring in a report stating the grounds upon which they dissent from the report of the Committee. B. 809, 814, sq.

Introduction of Bill.

144. Upon the adoption of the report of the Committee, the Bill may be presented and read a first time; and thereafter no further reference of the Bill to the Committee shall be necessary, unless so ordered by the Senate.

Connivance, condonation, collusion, &c.

145. If adultery be proved, the party from whom the divorce is sought may nevertheless be admitted to prove connivance at, or condonation of the adultery, collusion in the proceedings for divorce, or adultery on the part of the petitioner.

Connivance at, or condonation of the adultery, or collusion in the proceedings for divorce, is always a sufficient ground for rejecting a Bill of Divorce, and shall be inquired into by the Committee. And

When Minister of Justice may intervene.

should the Committee have reason to suspect connivance or collusion, and in their opinion it is desirable that fuller inquiry should be made, such opinion and the reasons therefor shall be communicated to the Minister of Justice, that he may intervene and oppose the bill should the interest of public justice in his opinion call for such intervention. B. 812, sq.

Parties may be heard.

146. The petitioner, the respondent and, if the Committee sees fit, any other person affected by the proceedings had, may be heard before the Committee in person or by counsel learned in the law of the bar of any province in Canada. B. 813.

Evidence taken under oath.

147. The petitioner and, if the respondent appears, the respondent, and all witnesses produced before the Committee shall be examined upon oath, or upon affirmation in cases where witnesses are allowed by the law of Canada to affirm; and the law of evidence shall, subject to the provisions in these rules, apply to proceedings before the Committee, and shall be observed in all questions of fact.

Declarations.

2. Declarations allowed or required in proof, may be made under the *Canada Evidence Act*. B. 811, sq.

148. Summonses for the attendance of witnesses and for the production of papers and documents before the Senate or the Standing Committee on Divorce shall be under the hand and seal of the Speaker of the Senate, and may be issued by the Clerk of the Committee, at any time after the date of the hearing has been appointed, to the party applying therefor. Witnesses, how summoned.

Such summonses may be served by any literate person, or, if so ordered by the Senate or by the Committee on Divorce, shall be served by the Gentleman Usher of the Black Rod or by any one authorized by him to make such service. Summonses, how served.

The reasonable expenses of making such service and the reasonable expenses of every witness for attending in obedience to such summons shall be taxed by the Chairman of the Committee. B. 813. Fees, how taxed.

149. In case any witness upon whom such summons has been served refuses to obey the same, such witness may by order of the Senate be taken into custody of the Gentleman Usher of the Black Rod, and shall not be liberated from such custody except by order of the Senate and after payment of the expenses incurred. B. 814. Witness disobeying summons.

Forms.

150. The subjoined forms, varied to suit the circumstances of the case, or forms to the like effect, may be used in proceedings for divorce.

Rules of Senate to apply.

151. All rules of the Senate which by reasonable intendment, are applicable to proceedings in divorce, shall, except in so far as altered or modified by these rules, or inconsistent therewith, apply to such proceedings. B. 816, sq.

Unprovided cases.

152. In cases not provided for by these rules the general principles upon which the Imperial Parliament proceeds in dissolving marriage and the rules, usages and forms of the House of Lords in respect of divorce proceedings may, so far as they are applicable, be applied to divorce proceedings before the Senate and before the Standing Committee on Divorce. B. 817.

A.

Divorce Forms.

NOTICE OF APPLICATION FOR DIVORCE.

Notice is hereby given that (*name of applicant in full*) of the of , in the county (*or district*) of , in the Province of (*or* in the North-west Territories *or as the case may be*), (*here state the addition or occupation, if any, of applicant, and the residence of the applicant if it is not in the same place as the domicile of the applicant*), will apply to the Parliament of Canada, at the next session thereof, for a Bill of Divorce from his wife (*or* her husband), (*here state names in full, residence and addition or occupation, if any, of the person from whom the divorce is sought*), on the ground of (*adultery, adultery and desertion, or as the case may be*).

Dated at , Province of , day of , 19 . } *Signature of applicant or of solicitor for applicant.*

(*When any particular relief is to be applied for, the nature thereof should be briefly indicated in the notice.*)

B.

DECLARATION AS TO SERVICE OF NOTICE, PETITION AND INFORMATION TO RESPONDENT, WHEN MADE PERSONALLY.

Province of
County (*or district*) of
To Wit:

I, A. B., of the , in the county (*or* of *district*) of , in the Province of .

(*occupation*) do solemnly declare:—

1. That on the day of , A.D. 19 , I served C. D. (*name of person served*) personally with a true copy of the notice hereto attached and marked "A," by giving the said copy to, and leaving it with the said C. D. at (*state place of service, with particularity as to street, number of house, or other detail.*)

2. That at the said time and place and in the said manner I also served the said C. D. with a true copy of the petition hereto attached and marked "B," appended to which copy there was then a true copy of the information to the respondent which is hereto also attached and marked "C."

3. That I know the said C. D., and that I believe him (*or* her) to be the person described in the said notice as the husband (*or* wife) of E. F., therein named.

(*Add any statements made by the person served to the person effecting the service, showing identity.*)

And I make this solemn declaration conscientiously believing the same to be true, knowing that it is of the same force and effect as if made under oath, and by virtue of *The Canada Evidence Act.*

Declared before me at the of in the county of in the Province of , this day of , A.D. 19 . } *Signature of declarant.*

NOTE.—*Exhibits attached to the declaration should be verified under the hand of the public functionary before whom the declaration is made.*

C.

GENERAL FORM OF PETITION.

TO THE HONOURABLE THE SENATE OF CANADA IN PARLIAMENT ASSEMBLED.

The petition of A. B. of the of in the County of in the Province of and at present residing at , the lawful husband (*or wife*) of C. D., of, &c., (*state names in full, domicile, actual residence and occupation*).

Humbly showeth:

1. That on or about the day of A.D. 19 , your petitioner, (*if the wife is the petitioner state with particularity her maiden name and residence. If she had been married before the marriage which she seeks to dissolve, state with particularity the circumstances and her name*) was lawfully married to the said C. D. at

2. That the said marriage was by license duly obtained (*or as the case may be*) and was celebrated by

3. That at the time of the said marriage your petitioner and the said C. D. were domiciled in Canada, and have ever since continued to be and are now domiciled in Canada.

(*All facts as to the residence and domicile of the parties at the time of their marriage and as to any change of residence or domicile since their marriage should be stated with particularity.*)

4. That after said marriage your petitioner lived and cohabited with said at , and that there are now living issue of the said marriage children, viz.: Mary D., born the day of A.D. 19 , and Elizabeth D., born the day of , A.D. 19 , (*or as the case may be.*)

5. That on or about the day of , A.D. 19 , at the in the , the said C. D. committed adultery with one G. H. of , and since then on divers occasions has committed adultery with the said G. H.

6. That your petitioner ever since discovered that the said had committed the said adultery has lived separate and apart from and the said C. D. has not since cohabited with your petitioner.

7. That your petitioner has not in any way connived at, or condoned the adultery committed by the said C. D.; and that no collusion exists between your petitioner and the said C. D. to obtain a dissolution of their said marriage.

Your petitioner therefore humbly prays:

That your Honourable House will be pleased to pass an Act dissolving the said marriage between your petitioner and the said C. D. and enabling your petitioner to marry again, and granting your petitioner such further and other relief in the premises as to your Honourable House may seem meet.

And as in duty bound your petitioner will ever pray.

Signature of Petitioner.

D.

DECLARATION VERIFYING PETITION.

Province of
County (*or district*) of .
To Wit:

I, A. B., of the of , in the county of , in the province of , (*occupation, if any.*) *In the case of the wife being the applicant say "wife of C. D.," and give names, residence and occupation or addition of the husband*), the petitioner in the foregoing petition named, do solemnly declare:—

1. That, to the best of my knowledge and belief, the allegations contained in the paragraphs of the foregoing petition, numbered respectively , are, and each of them is true.

2. (*If any matter is alleged, of which the petitioner has not personal knowledge, add, "That, with respect to the matters alleged in the paragraphs of the foregoing petition, numbered respectively , I am credibly informed and believe them, and each of them, to be true."*)

And I make this solemn declaration conscientiously believing it to be true, knowing that it is of the same force and effect as if

made under oath, and by virtue of the *Canada Evidence Act.*

Declared before me at the of in the county of , in the Province of , this day of , A.D. 19 .

Signature of declarant.

E.

INFORMATION TO BE ENDORSED ON, OR APPENDED TO THE COPY OF THE PETITION SERVED UPON THE RESPONDENT.

To (*Respondent's name*)

In accordance with Rule 139 of the "Standing Orders and Rules of the Senate" you are hereby informed that:

1. (*Petitioner's name*), the petitioner, is now residing at No. Street, in the City of , in the Province of (*or* in the State of , U.S.A., *or as the case may be.*)

2. Letters and notice for (*Petitioner's name*) may be delivered by sending them to the following address:

(*Post Office Address in Canada to be given.*)

3. The name and address of the solicitor acting for (*Petitioner's name*) are as follows:—

(*Give full particulars.*)

4. All notices and papers to be served upon (*Petitioner's name*) in this matter may be so served by serving them upon (*give full particulars of the name and address of some agent in the City of Ottawa*).

5. If you desire to oppose the granting of the divorce prayed for by the petition of which the within written (*or* hereto annexed) document is a true copy, you must within two months from the date when this copy is served upon you send a notice to that effect to the Clerk of the Senate of Canada, Parliament Buildings, Ottawa, Canada, and in that notice you must give the following particulars:—

(*a*) Your actual residence at the time of sending the notice.

(*b*) A post office address in Canada at which letters and notices for you may be delivered.

(*c*) The name and address of your solicitor, if any is acting for you.

(*d*) If you have a solicitor, but his address is not at Ottawa, Canada, you must give the name and address of an agent at

Ottawa, Canada, upon whom all notices and papers may be served.

6. If you do not send such notice to the Clerk of the Senate of Canada and with the above particulars, the Petition now served upon you may be considered by the Senate of Canada and a Bill of Divorce founded thereon may be passed without any further notice to you.

(*When the petition is one by a husband for a divorce from his wife, add the following*):

7. If you show, to the satisfaction of the Senate Committee on Divorce, that you have, and that you are prepared to establish upon oath, a good defence to the charges made by the petition of which the within written (*or* hereto annexed) document is a true copy, and that you have not sufficient money to defend yourself, that Committee may make an order that your husband shall provide you with the necessary means to sustain your defence, including the cost of retaining counsel, and the travelling and living expenses of yourself and of witnesses summoned to Ottawa on your behalf.

(*Signature of petitioner or his solicitor.*)

INDEX OF CASES.

NOTE.—The references "B" at the foot of each rule are to the third edition of Bourinot's Parliamentary Procedure.

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